IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 82 OF 2006
IN
WRIT PETITION NO. 5118 OF 1995

1. The Estate Investment Company Private Limited and anr. .. Petitioners
(Org.Petitioners)

Vs.

1. The State of Maharashtra and ors. .. Respondents
(Org.Respondents)

Mr. Atul Setalwad, Senior Counsel with Mr. Navroz Seervai with Mr. Firdosh Poonawala with Mr. V.B. Naik with Mr.Shrikant Shah & Ms.Sheetal Shah i/by M/s. Mehta & Girdharilal for petitioners.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mr. S.R. Nargolkar, AGP for respondent nos.1 and 2.

Mr. S.G. Karandikar for respondent nos. 3 to 5.

Mr. Y.S. Jahagirdar with Mr. K.S. Dewal for interveners.

CORAM: B.H. MARLAPALLE, &
D.B. BHOSALE, JJ.

Date : June 30, 2006.

P.C.:

1. Heard Mr. Setalwad, the learned Senior Counsel i/by M/s. Mehta & Girdharilal for petitioners, Mr. Kumbhakoni, the learned Associate

Advocate General for the State, Mr. Jahagirdar, the learned Senior Counsel for the interveners and Mr.Karandikar the learned counsel for the respondent nos.3 to 5.

2. Writ Petition No. 5118 of 1995 was disposed by us on 3/4/2006 by observing, inter alia, that the status of the petitioners over the suit land and the nature of the suit land could not be decided in a writ petition and the efficacious remedy for the same was to either approach the concerned revenue authorities or to institute a suit before the competent court. On the issue of dealing with an application for N.A. permission during the intervening period and as per the scheme of Section 44 of the Maharashtra Land Revenue Code, 1966, we had noted down the undertaking of the Deputy Collector that the petitioners shall be noticed as and when the application for N.A. permission is received in respect of the land over which the petitioners are shown as superior holders.

3. By this Review Petition, it is contended that the petitioners ought to be heard in an application for N.A. permission in respect of any land over which

the names of the petitioners appear in Other Rights Column as well and in support of these contentions the petitioners have relied upon the Government Circular (though referred to by the petitioners as Government Resolution) dated 12th October, 1988. This circular by itself does not lay down that the parties whose names are shown in the Other Rights Column in the revenue record or in 7x12 extract would be noticed and/or heard while dealing with an application for N.A. permission under the Code. However, it is contended that along with the said circular there is a format and the title to the same reads thus:-

> "Table of enquiry in the matter of application made for non-agricultural permission under section 44 of The Maharashtra Land Revenue Code, 1966."

. Mr. Setalwad, the learned Senior Counsel, submitted that these are the guide-lines issued by the State Government while dealing with an inquiry under Section 44 of the Code and when the State Government

itself has laid down in Clause 29 that the parties whose names appear in the Other Rights Column have an opportunity of filing their say and, therefore, if the petitioners names appear in Other Rights Column they ought to be noticed while deciding an application for N.A. permission.

4. This is a review petition with its limited scope and the circular dated 12th October, 1988 has not come before us for the first time. What has come before us for the first time is the format that is required to be filled in while dealing with the application filed under Section 44 of the Code and Clause 29 therein reads as under:-

> "Whether anybody else has any rights in the land? If so, whether he has any objection to the grant of N.A. permission (written say be obtained from such persons)."

. Mr. Setalwad also referred to another format

which appears to be a form for regularisation of N.A. used as well as unauthorised construction. Clause 13/E therein reads as under:-

> "If anybody has any right in the column of other rights, whether the applicant has obtained his consent?"

5. As noted by us, the circular dated 12th October, 1988 does not contemplate that notices are required to be issued while dealing with an application under Section 44 of the Code to the parties whose names appear in the Other Rights Column in the revenue record and undoubtedly if the guide-lines stipulated so, it would be necessary for the State Government to hear such parties. The petitioners cannot be permitted to seek a writ from us on the basis of the information sought to be obtained in the format annexed to the said circular. The rights of the parties, other than superior rights, cannot be adjudicated upon in a writ petition under Article 226 and the appropriate remedy for the

petitioners is to file a civil suit as has been rightly pointed out by Mr.Karandikar by referring to the decision in the case of State of Gujarat vs. Patel Raghav Natha and ors. **(AIR 1969 SC 1297)**. A three judge Bench of the Apex Court observed,

> "...It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant."

6. The liberty we granted to the petitioners in our order under review provides an efficacious remedy and we are, therefore, satisfied that for the time being and during pendency of such proceedings, that the petitioners may institute, the Government has given undertaking to issue notice in the cases where the petitioners names appear as superior holders

should meet the ends of justice. Hence, there is no case made out for review.

7. The Review Petition is rejected summarily.

(D.B. Bhosale,J.) **(B.H. Marlapalle,J.)**